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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,899	03/23/2004	Steven Petrou	1386/19	2461

25297 7590 10/28/2009

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ART UNIT	PAPER NUMBER
1634	
MAIL DATE	DELIVERY MODE
10/28/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Continuation Sheet

Part 11Resquest for Reconsideration

The amendments to the claims of 10/13/2009 are entered. Applicants' Remarks of 10/13/2009 with regard to the amended claims have been fully and carefully considered but are not found to be persuasive to put the application in condition for allowance.

Applicants have provided remarks concerning the claim to priority (p.5 of Remarks) indicating that the previous claims have been cancelled and thus the objection is moot. The Examiner notes that the newly presented claims are particularly drawn to analysis that includes 'a regulatory region', which is the limitation for which basis is not found in the priority document. As such the Examiner maintains that effective filing date of the newly presented claims is the filing date of the US application which is 03/23/2004 for the reasons of record set forth on pages 2-3 of the Office Action of 05/13/2009.

Applicants have provided remarks concerning the rejection of claims under 35 USC 103 as obvious in view of Claes et al. Applicants have asserted (p.5-6 of Remarks) that the newly presented claims are distinguished of Claes et al. The Examiner maintains that the methods as claimed do not in fact require the detection of any particular mutation for a diagnosis. While the claims recite the detection of the presence of a G at position 517 of SEQ ID NO: 1, this recitation is in the context of detecting an SMEI associated mutation and based on the detection categorizing the pateitn as having a high probability of having SMEI. As such, as set forth in the

rejection of claims in the Office Action of 05/13/2009 (e.g. see page 9), the step is optional and is not required for the practice of the claimed methods. The Examiner maintains that the claims, in so far as they encompass a method wherein a new mutation in a subject is identified, the mutations is determined to be a de novo truncation mutation, and based on the presence of the de novo truncating mutation a patient is determined to have a very high probability of having SMEI. With regard to dependent claims 29 and 30, the claims merely require the additional detection of mutations in the SCN1A gene but do not require the particular association of the gene content with any diagnosis, where screening the entire SCN1A would provide the ability to detect and identify any mutations in the SCN1A gene.

As such the Examiner maintains the rejection of claims under 35 USC 103 as obvious in view of the teachings of Claes et al, as set forth in the previous Office Action, is applicable to newly entered claims 28-20, and thus claims 28-20 are rejected under 35 USC 103(a) as being unpatentable over Claes et al (2001) for the reasons set in the Office Action of 05/13/2009 and reiterated above.

/Stephen Kapushoc/
Primary Examiner, Art Unit 1634